IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.4092 OF 2005
IN
SUIT NO.3777 OF 1997

Shantanu Nanubhai Desai ..Plaintiff.

Vs.

Dushyant N. Desai & Ors. ..Defendants.

Mr.Naushad Engineer i/b.R.M.G. Law & Associates for the Plaintiff.

Ms.Hansa Advani i/b.Mr.Sagheer A. Khan for Defendant Nos.1, 2 and 3.

CORAM : S.J. VAZIFDAR, J.
DATED : 14TH AUGUST, 2007

P.C. :

The Notice of Motion is filed on the basis that the suit has abated. However, by a separate order passed today in Chamber Summons No.486 of 2006, I have set aside the abatement and brought the beneficiary and the executor of the Will of the original Plaintiff on record. Thus, the basis of this Notice of Motion does not survive.

2. It is submitted on behalf of the Defendants that the suit is not maintainable and the reliefs sought cannot be granted in any event in view of Clause 33 of the deed of partnership. In other words, the

learned counsel appearing on behalf of the Defendants states that the suit is liable to be dismissed inter-alia under Order VII Rule 10 of the C.P.C.

3. This issue is beyond the scope of the present Notice of Motion. The Defendants are at liberty to adopt proceedings in this regard. Needless to add that all the allegations and contentions of the parties are kept open.

4. In the circumstances, the Notice of Motion is dismissed with the above clarification.